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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

JENNIFER BAGOSY, and ALEX
BAGOSY

Plaintiffs,

v.

PHH MORTGAGE SERVICES and
DOES 1-50 INCLUSIVE,

Defendants;

CASE NO. 8:18-CV-01750-AG (JDEx)

**STIPULATED PROTECTIVE
ORDER**

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the Parties (Plaintiffs Jennifer Bagosy and Alex Bagosy
6 (collectively “Plaintiffs”) and Defendant PHH Mortgage Services (“Defendant”))
7 hereby stipulate to and petition the Court to enter the following Stipulated Protective
8 Order. The parties acknowledge that this Order does not confer blanket protections
9 on all disclosures or responses to discovery and that the protection it affords from
10 public disclosure and use extends only to the limited information or items that are
11 entitled to confidential treatment under the applicable legal principles.

12 B. GOOD CAUSE STATEMENT

13 This action is likely to involve trade secrets, customer and pricing lists and
14 other valuable research, development, commercial, financial, technical and/or
15 proprietary information for which special protection from public disclosure and from
16 use for any purpose other than prosecution of this action is warranted. Such
17 confidential and proprietary materials and information consist of, among other
18 things, confidential business or financial information, information regarding
19 confidential business practices, or other confidential research, development, or
20 commercial information (including information implicating privacy rights of third
21 parties), information otherwise generally unavailable to the public, or which may be
22 privileged or otherwise protected from disclosure under state or federal statutes,
23 court rules, case decisions, or common law. Accordingly, to expedite the flow of
24 information, to facilitate the prompt resolution of disputes over confidentiality of
25 discovery materials, to adequately protect information the parties are entitled to keep
26 confidential, to ensure that the parties are permitted reasonable necessary uses of
27 such material in preparation for and in the conduct of trial, to address their handling
28 at the end of the litigation, and serve the ends of justice, a protective order for such

1 information is justified in this matter. It is the intent of the parties that information
2 will not be designated as confidential for tactical reasons and that nothing be so
3 designated without a good faith belief that it has been maintained in a confidential,
4 non-public manner, and there is good cause why it should not be part of the public
5 record of this case.

6 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
7 SEAL

8 The parties further acknowledge, as set forth in Section 12.3, below, that this
9 Stipulated Protective Order does not entitle them to file confidential information
10 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
11 and the standards that will be applied when a party seeks permission from the court
12 to file material under seal.

13 There is a strong presumption that the public has a right of access to judicial
14 proceedings and records in civil cases. In connection with non-dispositive motions,
15 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
16 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
17 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics,*
18 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
19 good cause showing), and a specific showing of good cause or compelling reasons
20 with proper evidentiary support and legal justification, must be made with respect to
21 Protected Material that a party seeks to file under seal. The parties' mere designation
22 of Disclosure or Discovery Material as CONFIDENTIAL does not— without the
23 submission of competent evidence by declaration, establishing that the material
24 sought to be filed under seal qualifies as confidential, privileged, or otherwise
25 protectable—constitute good cause.

26 Further, if a party requests sealing related to a dispositive motion or trial, then
27 compelling reasons, not only good cause, for the sealing must be shown, and the
28 relief sought shall be narrowly tailored to serve the specific interest to be protected.

1 *See Pintos v. Pacific Creditors Ass’n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
2 each item or type of information, document, or thing sought to be filed or introduced
3 under seal in connection with a dispositive motion or trial, the party seeking
4 protection must articulate compelling reasons, supported by specific facts and legal
5 justification, for the requested sealing order. Again, competent evidence supporting
6 the application to file documents under seal must be provided by declaration.

7 Any document that is not confidential, privileged, or otherwise protectable in
8 its entirety will not be filed under seal if the confidential portions can be redacted. If
9 documents can be redacted, then a redacted version for public viewing, omitting only
10 the confidential, privileged, or otherwise protectable portions of the document, shall
11 be filed. Any application that seeks to file documents under seal in their entirety
12 should include an explanation of why redaction is not feasible.

13 2. DEFINITIONS

14 2.1 Action: This above-entitled case styled as *Jennifer Bagosy and Alex*
15 *Bagosy v. PHH Mortgage Services*, pending before the United States District Court
16 for the Central District of California, Case No. 8:18-cv-01750-AG (JDEx), removed
17 from the Superior Court of the State of California, County of Orange, Case No. 30-
18 2018-01002146-CU-CO-CJC.

19 2.2 Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.

21 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
24 the Good Cause Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
26 their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm that
19 has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.
11 However, the protections conferred by this Stipulation and Order do not cover the
12 following information: (a) any information that is in the public domain at the time
13 of disclosure to a Receiving Party or becomes part of the public domain after its
14 disclosure to a Receiving Party as a result of publication not involving a violation of
15 this Order, including becoming part of the public record through trial or otherwise;
16 and (b) any information known to the Receiving Party prior to the disclosure or
17 obtained by the Receiving Party after the disclosure from a source who obtained the
18 information lawfully and under no obligation of confidentiality to the Designating
19 Party. Any use of Protected Material at trial shall be governed by the orders of the
20 trial judge. This Order does not govern the use of Protected Material at trial.

21 4. DURATION

22 Once a case proceeds to trial, information that was designated as
23 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
24 as an exhibit at trial becomes public and will be presumptively available to all
25 members of the public, including the press, unless compelling reasons supported by
26 specific factual findings to proceed otherwise are made to the trial judge in advance
27 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
28 showing for sealing documents produced in discovery from “compelling reasons”

standard when merits-related documents are part of court record). Accordingly, the terms of this protective order do not extend beyond the commencement of the trial.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
2 contains protected material. If only a portion of the material on a page qualifies for
3 protection, the Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents available for inspection
6 need not designate them for protection until after the inspecting Party has indicated
7 which documents it would like copied and produced. During the inspection and
8 before the designation, all of the material made available for inspection shall be
9 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
10 documents it wants copied and produced, the Producing Party must determine which
11 documents, or portions thereof, qualify for protection under this Order. Then, before
12 producing the specified documents, the Producing Party must affix the
13 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
14 portion of the material on a page qualifies for protection, the Producing Party also
15 must clearly identify the protected portion(s) (e.g., by making appropriate markings
16 in the margins).

17 (b) for testimony given in depositions that the Designating Party
18 identifies the Disclosure or Discovery Material on the record, before the close of the
19 deposition all protected testimony.

20 (c) for information produced in some form other than documentary
21 and for any other tangible items, that the Producing Party affix in a prominent place
22 on the exterior of the container or containers in which the information is stored the
23 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37-1 et seq.

10 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
11 joint stipulation pursuant to Local Rule 37-2.

12 6.4 The burden of persuasion in any such challenge proceeding shall be on
13 the Designating Party. Frivolous challenges, and those made for an improper
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
15 parties) may expose the Challenging Party to sanctions. Unless the Designating Party
16 has waived or withdrawn the confidentiality designation, all parties shall continue to
17 afford the material in question the level of protection to which it is entitled under the
18 Producing Party's designation until the Court rules on the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a
25 Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this Action,
9 as well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel)
12 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters and their staff;

18 (f) professional jury or trial consultants, mock jurors, and
19 Professional Vendors to whom disclosure is reasonably necessary for this Action
20 and who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A);

22 (g) author or recipient of a document containing the information or
23 a custodian or other person who otherwise possessed or knew the information;

24 (h) any deposition, proceeding, or hearing witness who previously
25 has had access to the “CONFIDENTIAL” Information or who is currently or was
26 previously an officer, director, employee or agent of an entity that has had access to
27 the “CONFIDENTIAL” Information;

1 (i) during their depositions, witnesses, and attorneys for witnesses,
2 in the Action who previously did not have access to the “CONFIDENTIAL”
3 Information, provided that: (1) the deposing party requests that the witness sign the
4 form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any
5 confidential information unless they sign the “Acknowledgment and Agreement to
6 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
7 by the court. Pages of transcribed deposition testimony or exhibits to depositions
8 that reveal Protected Material may be separately bound by the court reporter and
9 may not be disclosed to anyone except as permitted under this Stipulated Protective
10 Order; and

11 (j) any mediator or settlement officer, and their supporting
12 personnel, mutually agreed upon by any of the parties engaged in settlement
13 discussions;

14 (k) any other person or entity that Designating Party agrees to in
15 writing.

16 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other litigation
19 that compels disclosure of any information or items designated in this Action as
20 “CONFIDENTIAL,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such
22 notification shall include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or
24 order to issue in the other litigation that some or all of the material covered by the
25 subpoena or order is subject to this Protective Order. Such notification shall include
26 a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be
28 pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or court order shall not produce any information designated in this
3 action as “CONFIDENTIAL” before a determination by the court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party’s
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this Action
8 to disobey a lawful directive from another court.

9 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced
12 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
13 information produced by Non-Parties in connection with this litigation is protected
14 by the remedies and relief provided by this Order. Nothing in these provisions should
15 be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request,
17 to produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the
21 Non-Party that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the
24 Stipulated Protective Order in this Action, the relevant discovery request(s), and a
25 reasonably specific description of the information requested; and

26 (3) make the information requested available for inspection by
27 the Non-Party, if requested.
28

1 (c) If the Non-Party fails to seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party's confidential information responsive to the
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving
5 Party shall not produce any information in its possession or control that is subject to
6 the confidentiality agreement with the Non-Party before a determination by the
7 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
8 expense of seeking protection in this court of its Protected Material.

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
15 or persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
19 PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without prior
25 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
26 parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
13 only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. If a Party's request to file Protected Material
15 under seal is denied by the court, then the Receiving Party may file the information
16 in the public record unless otherwise instructed by the court.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in
21 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving
24 Party must submit a written certification to the Producing Party (and, if not the same
25 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
26 (by category, where appropriate) all the Protected Material that was returned or
27 destroyed and (2) affirms that the Receiving Party has not retained any copies,
28 abstracts, compilations, summaries or any other format reproducing or capturing any

1 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
3 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
4 reports, attorney work product, and consultant and expert work product, even if such
5 materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 4 (DURATION).

8 14. VIOLATION

9 Any violation of this Order may be punished by appropriate measures including,
10 without limitation, contempt proceedings and/or monetary sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 Date: April 2, 2019

JAMES HAWKINS APLC

4 /s/ Christina M. Lucio

5 James R. Hawkins, Esq.

6 Christina M. Lucio, Esq.

7 Attorneys for Plaintiffs

8 Jennifer Bagosy and Alex Bagosy

9 Date: April 2, 2019

BALLARD SPAHR LLP

10 /s/ Tanya M. Taylor

11 Marcos D. Sasso, Esq.

12 Tanya Taylor, Esq.

13 Attorneys for Defendant,

14 PHH Mortgage Services

15
16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
17

18
19 Dated: April 2, 2019

20 
JOHN D. EARLY

21 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Central
District of California on April 2, 2019 in the case of *Jennifer Bagosy and Alex
Bagosy v. PHH Mortgage Services*, Case No. 8:18-cv-01750-AG (JDEx). I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and
I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____